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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,377	06/17/1999	JOHN R. PLATE	02900.00004/	6413

7590 11/28/2001

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EXAMINER
CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
3611	

DATE MAILED: 11/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/335,377	PLATE ET AL.	
	Examiner	Art Unit	
	Eric Culbreth	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 September 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-19,22-24 and 26-33* is/are allowed.

6)☒ Claim(s) *20,21 and 25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. The amendment filed 9/24/01 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: There is no support in the original disclosure for claim 25 (the sensor being an inclination switch operatively connected to the hydraulic cylinder). Noting applicant's remarks, proximity switch 350 is not an "inclination" switch (i.e., it does not measure inclination), and there is no disclosure that the switch is even "operatively" connected to the hydraulic cylinder (there would appear to be no connection at all disclosed).

Applicant is required to cancel the new matter in the reply to this Office Action.

2. On page 2 of the remarks filed 9/24/01, it is stated that claim 20 has been amended. However, claim 20 has not been amended, but rather claim 22; hence it is assumed these remarks are directed to claim 22.

Allowable Subject Matter

3. Claims 1-19, 22-24, and 26-33 are allowed.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuetz in view of Laverda (both of record).

Schuetz discloses a vehicle comprising a frame 10 and a support 17 for supporting a load, the support being pivoted between post 12 and member 13 by piston 14 to elevate the load relative to the frame. Laverda discloses axle 3 connected to frame 1a (i.e., the vehicle body 1 is supported on appendage or member 1a) for relative movement and a system (valves 14, 18) for locking the axle relative to the frame when the frame is tilted more than a predetermined angle (relative to the axle; see column 3, lines 41-51, where automatic leveling ceases and the hydraulic circuit becomes inoperative when the maximum angle is reached). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Schuetz, who teaches a vehicle with a frame and boom that adjusts wheels for uneven terrain, to include a leveling and locking system such as taught by Laverda in order to prevent the vehicle from assuming an unsafe position (claim 20).

Regarding claim 21, in the combination Laverda's limit switch 34 senses when the frame is tilted by more than a maximum or predetermined angle.

The applicant remarks on pages 3-4 of the 9/24/01 amendment that neither references teaches why Laverda's automatic leveling system should be considered

applicable or advantageous to a material handling vehicle such as Schuetz's, that Schuetz's vehicle is operated in a stationary position while Laverda's vehicle operates on the move, and that the combination would not be made without the benefit of applicant's own disclosure (i.e., hindsight).

In response to applicant's arguments that the skilled artisan would not incorporate Laverda's automatic system into Schuetz's stationary digger, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, the skilled artisan would include a locking system in a leveling system such as Schuetz's in order to prevent unsafe tilting position.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 703/308-0360. The examiner can normally be reached on Monday-Thursday, 8:30-6:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703/306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-7687 for regular communications and 703/305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-1113.

Eric Culbreth
Primary Examiner
Art Unit 3611

11/23/01

edc
November 23, 2001